IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5673 of 1995

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M. DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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GIRDHARLAL MAVJIBHAI TRIVEDI - Petitioner(s)
Versus
SECRETARY & 5 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner
MS KIRAN PANDEY AGP for Respondent(s) : 1 - 3.
RULE SERVED BY DS for Respondent(s) : 4,
MR SHIRISH JOSHI for Respondent(s) : 5 - 6, 6.2.1, 6.2.2, 6.2.3,6.2.4

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
17th October, 2007

ORAL JUDGMENT

The petitioner before this Court is a member and former president of one Saraswati Cooperative Housing Society Limited, the respondent no. 4 herein. The petitioner has challenged the Order dated 29th April,

1995 made by the State Government [Deputy Secretary to the Government of Gujarat, Agriculture, Cooperation & Rural Development Department] in Revision Application No. 54 of 1994. The facts leading to the present petition are as under :-

The aforesaid Saraswati Cooperative Housing Society Limited [hereinafter referred to as, "***the Society***"] was formed in or around 1961. The Society owns a piece of land in the town of Patan. The said piece of land has been developed for residential houses, sub-plots are allotted to its members. In the meeting of the Society held on 24th September, 1989, the then office bearers inducted the respondents nos. 5 & 6 as the members of the Society and allotted them plot nos. 37 & 38. This allotment was the subject matter of challenge before the District Registrar of Cooperative Societies, Mehsana. By order dated 6th March, 1990 made by the District Registrar of Cooperative Societies, Mehsana it was held that the meeting of the Society held on 24th September, 1989 was in contravention of the bye-laws of the Society. The induction of the respondents nos. 5 & 6 in the Society and the allotment of plots nos. 37 & 38 to

them were in contravention of the bye-laws of the Society and that a fresh meeting of the General body of the Society for the year 1989-1990 be held. Since the said order dated 6th March, 1990, on 30th March, 1993, the District Registrar of Cooperative Societies sent a communication to the President/Secretary of the Society informing that the business conducted in the general meeting held on 24th September, 1989 was cancelled. Hence, induction of the respondents nos. 5 & 6 as the members of the Society stood cancelled. The said communication was followed by notice dated 3rd April, 1993 issued under Section 23 [2] of the Cooperative Societies Act, 1961 [hereinafter referred to as, "***the Act***"] for hearing of the matter *afresh*. After hearing the parties, by order dated 26th July, 1993 made by the District Registrar of Cooperative Societies, Mehsana held that the respondents nos. 5 & 6 had been inducted as the members of the Society by a resolution passed by the managing committee of the Society in its meeting held on 28th January, 1990; that the said respondents each had paid admission fee of Re.1/=, the membership fee of Rs.5/= and their contribution to the share capital of Rs. 250/=. Thus,

the membership of the said respondents was lawful and was not affected by cancellation of the business conducted in the meeting held on 24th September, 1989. In view of the said finding, the notice issued under Section 23[2] of the Act was ordered to be withdrawn.

Feeling aggrieved, the Society preferred Revision Application No. 30 of 1994 before the Registrar of Cooperative Societies. The said Revision Application came to be allowed on 27th July, 1994. Feeling aggrieved, the respondents no. 5 & 6 preferred Revision Application No. 54 of 1994 before the State Government. By *impugned* order dated 29th April, 1995 made by the Deputy Secretary [*Appeals*], Agriculture, Cooperation & Rural Development Department, the said revision application came to be allowed. At the relevant time, the Society was managed by the custodian. The existing members of the Society, therefore, requested the Custodian to carry the matter further. *Nevertheless*, as the custodian did not take any step, the present petition is preferred by one of the members, a former president of the managing Committee of the Society, as an individual.

Mr. Jani has submitted that the order dated 26th July, 1993 made by the District Registrar, Cooperative Societies was *ex facie* illegal and unsustainable. The order of the State Government confirming the said order is equally bad and illegal. He has submitted that the bye-laws of the Society specifically provide that only those persons can be inducted as the members of the Society who do not own any other piece of land in the town of Patan. He has submitted that the respondents nos. 5 & 6 are the members in one Lakshminagar Cooperative Housing Society. They have been allotted plot of land in the said Lakshminagar Cooperative Housing Society. They are, therefore, not eligible for membership in the Society. He has submitted that at the relevant time, the president and the secretary of the Society happened to be one Umakant Raval and Ashwin Raval. The said Umakant Raval and Ashwin Raval happen to be the brothers of the respondent no.6 Urmilaben Arvindbhai Raval and the brothers-in-law of the respondent no.5-Arvindbhai Bhogilal Raval. The said president and the secretary had misused their authority and had illegally inducted the respondents

no. 5 & 6 as the members of the society on payment of negligible fees, contrary to the bye-laws of the Society. He has submitted that the valuable pieces of land have been given over to the respondents nos. 5 & 6. Thus, the induction of the respondents nos. 5 & 6 as the members in the Society was a largess granted by the then President and the Secretary of the Society on account of their personal relationship. He has submitted that the Additional Registrar of Cooperative Societies had by Order dated 27th July, 1994 rightly allowed the revision preferred by the Society. The same did not require to be interfered with by the State Government.

The petition is contested by Mr. Joshi. He has submitted that the respondents no. 5 & 6 had purchased the aforesaid sub-plots nos. 37 and 38 from the out-going members one Hiraben Panchal and one Mr. Mulchand Kimatrai by registered sale deeds as far back as in the year 1978. Pursuant to the said transfer, the respondents no. 5 & 6 had applied for membership in the Society as early as in the year 1978 and had also paid requisite fees, and for that, due receipts had been issued by the Society. At that

time, the said respondents no. 5 & 6 did not own any other piece of land in the town of Patan and were eligible to become members in the Society. In view of the protracted litigation, the said respondents had to buy another piece of land and had to become member in the Lakshinagar Cooperative Housing Society. The membership in the said Lakshminagar Cooperative Housing Society, therefore, should not render the respondents no. 5 & 6 ineligible for membership in the Society.

Miss Pandey has appeared for the respondents authorities. She has submitted that the respondents no. 5 & 6 had applied to the District Registrar of Cooperative Societies, Mehsana; that the order dated 30th March, 1993 was made against them without hearing them. Pursuant to the said representation, the aforesaid notice under Section 23 [2] of the Act came to be issued on 3rd April, 1993. She has, however, candidly admitted that the records of the matter are not available with the respondents authorities.

As recorded hereinabove, by order dated 6th March, 1990 the District Registrar of Cooperative Societies held that the annual general meeting of the

Society and its proceeding dated 24th September, 1989 were contrary to the bye-laws. The business conducted in the said meeting was held to be illegal and cancelled. The said order dated 6th March, 1990 had become final. Since the said order, the communication dated 30th March, 1993 seems to have been issued by the District Registrar of Cooperative Societies, Mehsana without any reason. It appears that the said communication was issued after more than three years with an intention to rake up the matter afresh. Under the guise of the said communication and the representation made by the respondents no. 5 & 6, the notice came to be issued on 3rd April, 1993. Under the guise of hearing *afresh*, the induction of the respondents no. 5 & 6 as the members in the Society, which was held to be illegal by order dated 6th March, 1990, was legalized by holding that they were inducted as members, by the managing committee of the Society in its meeting held in the month of January, 1990. Thus, an entirely new case was made out in favour of the respondents nos. 5 and 6 to set at naught the order dated 6th March, 1990.

In my view, the notice dated 3rd April, 1993 and

the order dated 26th July, 1993 made pursuant to the said notice were uncalled for, were made in colorable exercise of power with a view to favouring the respondents no. 5 & 6. Further, in order dated 26th July, 1993, it is recorded that the respondents no. 5 & 6 were inducted as the members in the Society by the managing Committee in its meeting held on 20th January, 1990. It was also observed that the said respondents had paid admission fee and the membership fee and contribution to the share capital of the Society. *Nevertheless*, now before this Court, the said respondents nos. 5 & 6 have come out with a case that they had purchased the said plots nos. 37 & 38 from outgoing members as far back as in the year 1978 by registered sale deeds; and that they had paid necessary transfer fees, etc. The *factum* of purchase of the concerned plots of land in the year 1978 had not been argued before any of the authorities below at any time in the pending proceedings. Thus, it appears that entirely new case is made out by the respondents no. 5 & 6 before this Court. I do not suppose, that is permissible. As the matter at dispute had become final by order dated 6th March,

1990 made by the District Registrar of Cooperative Societies, the Additional Registrar of Cooperative Societies had rightly *set-aside* the order dated 26th July, 1993 made anew by the then District Registrar of Cooperative Societies. The State Government ought not to have interfered and restored the said order dated 26th July, 1993.

For the aforesaid reasons, the petition is allowed. The *impugned* order dated 29th April, 1995 made by the State Government in Revision Application No. 54 of 1994 is *quashed* and set-aside. The Order dated 27th July, 1994 made by the Additional Registrar [*Appeal*] in Revision Application No. 30 of 1993 is restored. Rule is made absolute. The parties will bear their own cost.

Mr. Joshi requests that operation of this order be stayed for a period of six weeks from *today.* The request is accepted. The Society will maintain *status quo* in connection with the disputed plots for a period of six weeks from *today*.

{Ms. R.M Doshit, J.}

*Prakash**